



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[SPATS No.: KY-256-FOR] [Docket ID: OSM-2012-0014]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Kentucky regulatory program (“the Kentucky program”) for surface coal mining and reclamation operations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky has revised its bonding regulations to satisfy, in part, the concerns included in a letter

from OSM dated May 1, 2012, regarding bonding inadequacies. On May 4, 2012, Kentucky adopted the revisions as emergency regulations to avoid possible loss of its authority to enforce the part of the Kentucky program that pertains to establishment of reclamation bond amounts. Also on May 4, 2012, identical proposed revisions started the normal review process in Kentucky for changes to administrative regulations. On September 28, 2012, the Department for Natural Resources (DNR), which is a part of Kentucky's Energy and Environment Cabinet (EEC), submitted to OSM the administrative bonding regulations as proposed amendments to its approved permanent regulatory program.

DATES: We will accept electronic or written comments on the proposed rules until 4:00 p.m., Eastern Time [Insert date 30 days after date of publication in the FEDERAL REGISTER]. If requested, we will hold a public hearing on [Insert date 25 days after date of publication in the Federal Register]. We will accept requests to speak until 4:00 p.m., local time on [Insert date 15 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. The proposed rule has been assigned Docket ID: OSM-2012-0014. Please follow the online instructions for submitting comments.
- **Mail/Hand Delivery/Courier:** Mr. Robert S. Evans, Acting Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and

Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Please include the rule identifiers (SPATS No. KY-256-FOR and Docket ID OSM-2012-0014) with your comments.

You may receive one free copy of the amendment by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. You also may review the amendment at the following addresses during normal business hours:

Mr. Robert S. Evans, Acting Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky, 40503, Telephone: (859) 260-3900. E-mail: bevans@osmre.gov.

Steve Hohmann, Commissioner, Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Evans,
Telephone: (859) 260-3900. E-mail: bevans@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures

IV. Procedural Matters and Required Determinations

I. Background on the Kentucky Program

The Secretary of the Interior conditionally approved the Kentucky regulatory program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, Federal Register (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

On May 1, 2012, in accordance with 30 CFR 733.12(b), we notified Kentucky's Energy and Environment Cabinet (EEC) that we had reason to believe that Kentucky is not implementing, administering, enforcing, and maintaining the reclamation bond provisions of its approved program in a manner that ensured that the amount of the performance bond for each surface coal mining and reclamation operation is "sufficient to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture," as required by section 509(a) of SMCRA.

In response, EEC, which functions as the SMCRA regulatory authority in Kentucky, filed two emergency regulations and modifications to two existing Kentucky administrative regulations regarding Kentucky's bonding program with the Kentucky Legislative

Research Commission on May 4, 2012. Under Kentucky law, the emergency regulations took effect on that date and remained in effect for 180 days. During that time, proposed revisions, that are identical to the emergency regulations, began the normal review process in Kentucky for changes to their administrative regulations. On September 28, 2012, the DNR submitted these proposed regulations to OSM that would revise their bonding administrative regulations in their approved permanent regulatory program.

The September 28, 2012, submittal is the subject of this rulemaking and includes both the emergency regulation and three revised administrative regulations that propose revisions to the Kentucky bonding rules that the EEC originally submitted to us on May 7, 2012 (Docket ID OSM-2012-0014).

The first emergency regulation, 405 KAR 10:011E, repeals the existing bonding regulations in 405 KAR 10:010 and 405 KAR 10:020. The second administrative regulation, 405 KAR 10:015 replaces the regulations repealed by 405 KAR 10:011E. This administrative regulation contains the provisions formerly located in 405 KAR 10:010 (except for Section 4), 405 KAR 10:020, and 405 KAR 10:030 Sections 2 and 3. In addition, 405 KAR 10:015 contain the following significant revisions to the previous regulations:

- Section 6(2) allows the cabinet to use the reclamation costs submitted in the permit application to establish the bond amount required, if those costs are higher than the reclamation costs calculated by the cabinet.

- Section 6(3) requires the cabinet to review bond amounts established in the regulations at a minimum of every two years to determine if those amounts are adequate after consideration of the impacts of inflation and increases in reclamation costs.

- Section 7 increases minimum bond amounts to \$75,000 for the entire surface area under one permit, \$75,000 per increment for incrementally bonded permits, \$50,000 for a permit or increment operating on previously mined areas, and \$10,000 for underground mines that have only underground operations (no surface facilities).

- Section 8 establishes new, increased bond amounts as follows:
 - \$2,500 per acre and each fraction thereof for coal haul roads, other mine access roads, and mine management areas.
 - \$7,500 per acre and each fraction thereof for refuse disposal areas.
 - \$10,000 per acre and each fraction thereof for an embankment sediment control pond. Each pond must be measured separately if the pond is located off-bench downstream of the proposed mining or storage area. The cabinet also may apply this rate to partial embankment structures as deemed necessary to meet the requirements of Section 6(1) of 405 KAR 10:015.
 - \$3,500 per acre and each fraction thereof for coal preparation plants. In addition, the bond amount must include the costs associated with demolition and disposal

of concrete, masonry, steel, timber, and other materials associated with surface coal mining and reclamation operations.

- \$2,000 per acre and each fraction thereof for operations on previously mined areas.
- \$3,500 per acre and each fraction thereof for all areas not otherwise addressed in 405 KAR 10:015 Section 8.
- For permits with substandard drainage that require long-term treatment, the cabinet must calculate and the permittee must post an additional bond amount based on the annual treatment cost provided by the permittee, multiplied by twenty years. In lieu of posting this additional bond amount, the permittee may submit a satisfactory reclamation and remediation plan for the areas producing the substandard drainage.

This administrative regulation also moves the supplemental assurance requirements previously located at 405 KAR 16:020 Section 6 to 405 KAR 10:015 Section 11 and increases the supplemental assurance amount from \$50,000 to \$150,000.

The proposed amendment also includes several proposed rule reorganizations. These changes include the transfer of 405 KAR 10:010 Section 4 to 405 KAR 10:030 Section 1, the transfer of 405 KAR 10:030 Section 4 to 405 KAR 10:030 Section 2, and the transfer of 405 KAR 10:010 Section 5 to 405 KAR 10:030 Section 3. Lastly, the Legislative Research Commission made suggested amendments which are not intended to change the meaning of

the administrative regulations but rather clarify content or are made simply to make the regulation comply with KRS 13A drafting requirements.

III. Public Comment Procedures

As discussed above, the proposed amendment that Kentucky submitted on May 4, 2012, includes both emergency and non-emergency proposed regulations that revise their bonding regulations. We invite you to comment on both the emergency and non-emergency provisions of this proposed amendment. Specifically, under 30 CFR 732.17(h), we seek your comments on whether the provisions of this amendment meet the applicable regulatory program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

Send your written comments to OSM using one of the methods described under **ADDRESSES**. Please include the Docket ID “OSM-2012-0014” at the beginning of all comments. Your comments should be specific, pertain only to the Kentucky amendment discussed in this rulemaking, and include explanations in support of your recommendations. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than the Federal eRulemaking Portal

or the OSM location listed in **ADDRESSES** will be included in the docket for this rulemaking or considered in the development of a final rule.

Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., Eastern Time), on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her

testimony. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak have been heard.

Public Meeting or Teleconference

If there is only limited interest in participating in a public hearing, we may hold a public meeting, in person or by teleconference, in place of a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All meetings will be open to the public and, if possible, we will post notice of meetings at the locations listed under **ADDRESSES**. We will include a written summary of each meeting in the administrative record.

IV. Procedural Matters and Required Determinations.

Executive Order 12866 – Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 11, 2013.

Thomas D. Shope,
Regional Director, Appalachian Region.

[FR Doc. 2013-03779 Filed 02/19/2013 at 8:45 am; Publication Date: 02/20/2013]